

Permittee: Shapell Industries of Northern California
Project Name: Milpitas Town Center Commercial Renovation

File No. 100.03.380.2
Private Job Account No. 3153
Improvement Plan No.: 2-1037 to 2-1043

PERMITTEE DEDICATION AND IMPROVEMENT AGREEMENT

THIS AGREEMENT, executed this _____ day of _____, 2005, at Milpitas, California, by and between the CITY OF MILPITAS, a municipal corporation of the State of California, (hereafter referred to as "City") and Shapell Industries of Northern California, 100 North Milpitas Blvd, Milpitas, CA 95035, (hereafter referred to as "Permittee"):

WITNESSETH

Pursuant to applicable ordinances and resolutions of City, and in consideration of the mutual terms, covenants and conditions herein, and for other valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. DEDICATION

(a) Permittee offers to dedicate the real property shown on **Exhibit "A"** (attached hereto, hereby referred to made a part hereof) as public service and utility purpose easement with all necessary and convenient means of ingress and egress to and from said easement. Said dedicated property shall be free and clear of all liens and encumbrances except those as City shall expressly waive in writing. Permittee agrees not to revoke said offer of dedication, and to keep said offer open until City accepts said offer by resolution.

(b) Upon execution of this agreement Permittee agrees to deliver a properly executed grant deed to City of the real property described in Exhibit "A" and such other executed conveyances or instruments necessary to convey clear title as herein required. Permittee shall provide at Permittee's sole cost and expense, to City:

1. A preliminary title report issued by a title insurance company relating to the property offered for dedication; said Preliminary Title Report shall be furnished prior to execution of this agreement.
2. A subdivision guarantee from the title insurance company prior to recordation of the easements on the map.

(c) Upon the condition precedent that Permittee shall perform each and every covenant and condition of this agreement, City agrees to accept said real property offered for dedication.

2. IMPROVEMENTS

Permittee agrees that it will construct at its sole cost and expense all those certain improvements set forth in **Exhibit "B"**, (attached hereto, hereby referred to and made a part hereof). Said improvements shall be completed **within 24 months from the execution date of this agreement (see Exhibit B for noted exception).**

3. IMPROVEMENT REQUIREMENTS

Permittee agrees that it will construct said improvements in accordance with the requirements set forth in this agreement and in accordance with all applicable ordinances, resolutions and orders of City, as amended or revised as of the date of said construction, and governing statutes of the State of California or the United States of America; and in

accordance with all plans and specifications, profiles, sizes, lines and grades approved or promulgated by the Engineer for City, as of the date of said construction.

4. APPROVAL

Permittee agrees that said improvement plans shall be subject to the approval of Engineer for City and that improvements will be constructed under and subject to the inspection of and to the satisfaction of the Engineer for City. No work of improvements shall be undertaken by Permittee until all plans and specifications have been submitted to Engineer for City and have been approved by him in writing nor shall any change be made in said plans and specifications or in the work of improvement to be done under them without the prior written approval of Engineer for City.

5. FAITHFUL PERFORMANCE BOND

Upon the execution of this agreement, Permittee shall file and submit security to CITY as obligee in the penal sum of one million two hundred thousand dollars (\$1,200,000.00), conditioned upon the full and faithful performance of each of the terms, covenants and conditions of this Agreement and conditioned upon the full and faithful performance of any and all improvement work required hereunder. See Exhibit "B" for scope of bonding requirements.

Any faithful performance security required hereunder shall be reduced to 10% of the security's original value for one year after the date of final completion and initial acceptance of said work to fulfill the one-year maintenance guarantee period for said improvements.

6. LABOR AND MATERIALS BOND

Upon execution of this Agreement, Permittee shall file and submit security to City, as obligee, in the penal sum of one million two hundred thousand dollars (\$1,200,000.00), insuring to the benefit of any contract, his subcontractors, and to persons renting insuring to the benefit of any contractor, his subcontractors, and to persons renting equipment or furnishing labor or materials to them for the cost of labor and materials furnished in connection with any and all improvement work required hereunder.

7. LABOR AND MATERIALS CLAIMS

Permittee agrees to pay all costs for labor or materials in connection with the work of improvement hereunder.

8. EASEMENTS

Any easement of right-of-way necessary for the completion of any of the improvement required of Permittee shall be acquired by Permittee at his sole cost and expense. In the event that eminent domain proceedings are necessary for the acquisition of any easement or right-of-way, Permittee agrees that he will pay all engineering fees and costs, legal fees and costs, and other incidental costs sustained by City in connection with said eminent domain proceeding and any condemnation award and damages (including all costs awarded in said eminent domain proceeding, and upon ten days written notice from City, he will deposit such sums as are determined by City Council to be necessary to defray said fees, costs, awards, and damages.

9. GUARANTEE

Permittee agrees that, upon ten days written notice from City, Permittee will immediately remedy, restore, repair, or replace, at its sole cost and expense and to the satisfaction of Engineer for City, all defects, damages, or imperfections due to or arising from faulty materials or workmanship appearing within a period of one year after date of final completion and acceptance of all of said improvements. If Permittee shall fail to remedy, restore, repair or replace

said defects, damages or imperfections as herein required, City may at its option, do so and recover the full cost and expense thereof from Permittee or Permittee's surety.

10. INDEMNIFICATION

Permittee agrees to indemnify and save harmless City, City Council, City Engineer, or any other officer or employee of City from any and all costs, expenses, claims, liabilities or damages, known or unknown, to persons, or property heretofore or hereafter arising out of or in any way connected with the act, omission or negligence of Permittee, its officers, agents, employees, contractors or subcontractors.

11. INSURANCE

Prior to commencing any work, Permittee, agrees to obtain an Encroachment Permit from the Engineering Division and at Permittee's expense, provide CITY with a public liability insurance policy (or a certificate thereof acceptable to City Attorney) insuring City, its officers and employees against liability for injuries to persons or property (with minimum coverage of \$1,000,000 for each person and \$1,000,000 fee each occurrence and \$1,000,000 for property damage in each occurrence) in connection with work performed by, for or on behalf of Permittee. Said Policy shall: (a) be issued by an insurance company authorized to transact business in California; (b) be written on an occurrence basis; (c) require 30 days prior written notice to City of cancellation or coverage reduction; (d) provide that it is full primary coverage so that said City, officers or employees have other insurance covered by said policy, said other insurance shall be excess insurance; (e) provide that said City, officers and employees shall not be precluded from claim thereunder; (f) be maintained in effect until acceptance of Permittee's improvements. If Permittee does not comply with the provisions of this paragraph, City may (at its election and in addition to other legal remedies) take out the necessary insurance, and Permittee shall forthwith repay City the premium therefor.

12. NO WAIVER

Nothing contained in this agreement shall be construed to be a waiver, release or extension of any provision heretofore required by ordinance, resolution or order of the City Council of the City.

13. SUCCESSORS - RUN WITH LAND

This agreement shall bind the heirs, administrators, executors, successors, assigns and transferees of Permittee. It is agreed and understood that the covenants in this agreement shall run with the land and are for the benefit of the other lands in the CITY OF MILPITAS, and are made by Permittee expressly, its heirs, administrators, executors, successors, assigns and transferees and to the CITY OF MILPITAS, its successors and assigns.

14. MISCELLANEOUS

Time shall be of the essence of this Agreement. All covenants herein contained shall be deemed to be conditions. The singular shall include the plural; the masculine gender shall include the feminine and neuter gender. All comments presented by Permittee hereunder shall be subject to approval of the City Attorney as to form.

15. Upon completion of the work and before City Initial Acceptance of the work thereof, Permittee shall provide the City a complete original mylar of "Record Drawing" showing all the changes from the original plan.

16. Permittee agrees to comply with all requirements set forth on Exhibit "C", (attached hereto, hereby referred to and made a part hereof).

17. In the event that Permittee fails to perform any obligation on its part to be performed hereunder, Permittee agrees to pay all costs and expenses incurred by City in securing performance of such obligation, and if suit be brought by City to enforce this agreement, Permittee agrees to pay costs of suit and reasonable attorney's fees to be fixed by Court.

IN WITNESS WHEREOF, the parties hereto have executed this agreement, the day and year first above written.

J. C. TRUEBRIDGE
Name
PRESIDENT

Title

BY JC Truebridge 8/31/05
Permittee** Date

Ken Cox
Name
V.P.

Title

BY Ken Cox 8/31/05
Permittee** Date

CITY OF MILPITAS

BY _____
City Manager Date

Approved as to form this

_____ day of _____, 2005

City Attorney

Approved as to sufficiency this

_____ day of _____, 2005

City Engineer

* Same date as on page 1

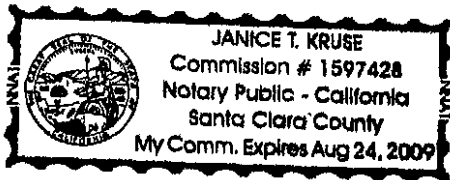
** Attach acknowledgment

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Clara

On August 31, 2005 before me, **Janice T. Kruse**, Notary Public personally appeared, **J.C. Truebridge & Ken Cox** personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.



WITNESS my hand and official seal.

Janice T. Kruse
Signature of Notary Public

Optional Information

Title or Type of Document: Permittee Dedication and Improvement Agreement -
Milpitas Town Center Renovation.

Capacity Claimed by Signer: President & Vice President of Shapell Industries of Northern California

Permittee: Shapell Industries of Northern California
Project No. PJ 3153
Project Name: Milpitas Town Center Commercial Renovation

EXHIBIT "A"
DEDICATIONS

The necessary dedication shall be recorded on a parcel map, prior to acceptance of the improvements.
A copy of the map is attached below.

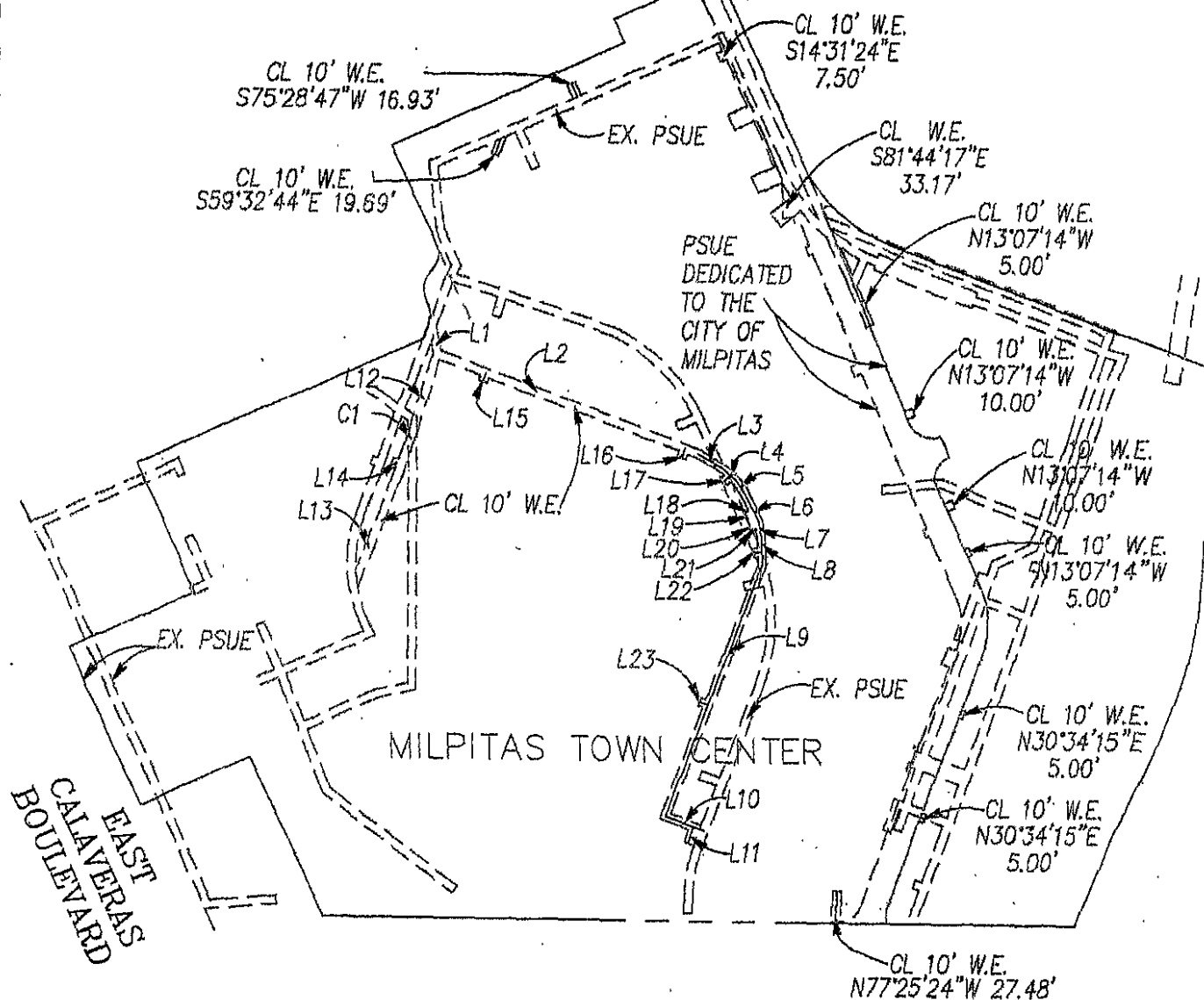
NORTH MILPITAS BOULEVARD

PSUE
DEDICATED
TO THE
CITY OF
MILPITAS

LINE TABLE					
L1	S89°27'12"E	33.72'	L12	S63°38'23"E	97.17'
L2	N30°16'05"E	327.09'	L13	S59°21'53"E	136.75'
L3	N41°26'15"E	35.81'	L14	N30°09'42"E	10.94'
L4	N52°56'15"E	18.00'	L15	S58°23'59"E	10.77'
L5	N64°11'15"E	18.00'	L16	S59°11'31"E	11.47'
L6	N75°11'15"E	36.00'	L17	S37°03'45"E	11.09'
L7	N86°26'15"E	18.00'	L18	S12°56'17"E	6.50'
L8	S82°03'45"E	34.68'	L19	N75°11'15"E	14.52'
L9	S59°29'20"E	318.47'	L20	N86°26'15"E	9.00'
L10	N30°30'40"E	47.93'	L21	N07°28'07"W	6.52'
L11	S59°29'20"E	20.28'	L22	S07°56'15"W	10.00'
			L23	S29°54'06"W	10.77'

CURVE TABLE

C1 R=1000.00' D=03°27'38" L=60.40'



WATERLINE AND PUBLIC SERVICE UTILITY EASEMENTS
MILPITAS TOWN CENTER



PLANNERS
CIVIL ENGINEERS
SURVEYORS

1390 SOUTH MAIN STREET
SUITE 310
WALNUT CREEK, CA. 94596
(925) 476-2300
FAX (925) 476-2350

Subject PLAT OF PROPOSED EASEMENTS

Job No. 204056.0 Scale 1"=200'

By NLD Date 08-05-05 Chkd. RCW

Permittee: Shapell Industries of Northern California
Project No. PJ 3153
Project Name: Milpitas Town Center Commercial Renovation

EXHIBIT "B"
IMPROVEMENTS

The public improvements for Town Center Commercial Renovation include but are not limited to water main relocation & related work, sanitary sewer main relocation & related work, storm drain main relocation & related work, recycled water connection, and related roadway improvements along Milpitas Blvd, Calaveras Blvd & Hillview Dr such as curb and gutter, pavement, sidewalk, street light, signage and striping, bus stop. These improvements are shown on the referenced improvement plans below.

The bonding also includes a traffic signal at Hillview Dr and Town Center Dr intersection and necessary physical geometric improvements for operation of the same intersection as a requirement of the project (May 4, 2004 City Council approval, condition 51b).

Drawing #	Scope of work	Bond amount	Timing (completion of work)
2-1037	Phase 1 public utilities	\$350,000	2 years
2-1038	Phase 2 public utilities	\$100,000	2 years
2-1039	Calaveras Blvd frontage	\$202,000	2 years
2-1040	Community Center Driveway area improvements	Use \$141,000	See owner participation agreement. Attachment 5, item ai
2-1041	Milpitas Blvd crosswalk improvements	Use \$34,000	See owner participation agreement. Attachment 5, item aii
2-1042 also refer to building	Beresford Ct crosswalk & sidewalk	23,000	See owner participation agreement. Attachment 5, item ci
2-1043	Hillview Dr & Town Center Dr signal & geometric improvements	\$350,000	Condition 51b (maybe 5 years)

Provide separate bonds for each scope of work that has a different timing (Phase 1 public utilities, phase 2 public utilities and Calaveras Blvd frontage can be combined as one set of faithful performance bond and labor & materials bond. Separate set of bonding for Hillview Dr & Town Center Dr signal & geometric improvements).

Permittee: Shapell Industries of Northern California
Project No. PJ 3153
Project Name: Milpitas Town Center Commercial Renovation

EXHIBIT "C"
REQUIREMENTS

1. The permittee agrees to comply with all special conditions and notes of approval for this development.
2. The permittee agrees to provide security for all public improvements (Faithful Performance and Labor and Materials), and pay all related development fees (as outlined in this agreement and the approved conditions and notes of approval).

A. Fees to be paid upon execution of this agreement:

a)	Plan-check and Inspection Deposit	(PJ3153-13-2500)	<u>120,000.00</u>
b)	Right-of-Way Reimbursement Fee	(310-3614-XXXX50)	<u>Not applicable</u>
c)	Improvement Reimbursement Fee	(310-3614-XXXX70)	<u>Not applicable</u>
Sub-total \$			<u>120,000.00</u>

B. Fees to be paid at time of building permit issuance:

a)	Water Connection Fee	(402-3715)	<u>pay with building permit</u>
b)	Potable Water Meter Fee	(400-3662)	<u>To be pay later</u>
c)	Recycled Water Meter Fee	(406-3622)	<u>To be pay later</u>
d)	Sanitary Sewer Connection Fee	(452-3715)	<u>pay with building permit</u>
e)	Sewer Treatment Plant Fee	(452-3714)	<u>pay with building permit</u>
f)	Sewer Bypass Benefit Fund	(HA1320-2500)	<u>Not applicable</u>
g)	Storm Drain Connection Fee	(340-3711)	<u>381,216.00</u>
h)	Parksite Fee		
	1. Park Dedication In-Lieu Fee	(320-3712)	<u>Not applicable</u>
	2. PUD Park Fee	(320-3712)	<u>Not applicable</u>
i)	Hillside Water Reimbursement	(HA1324-2500)	<u>Not applicable</u>
Sub-total \$			<u>381,216.00</u>
Total \$			<u>501,216.00</u>

Control No. 2005-0

Recording requested by:

City of Milpitas

When recorded mail to:

City of Milpitas

City Engineer's Office

455 E. Calaveras Blvd.

Milpitas, Ca 95035

Record without fee under Section

6103-Government Code, State of California

Encroachment Permit Agreement Upon Public Right of Way

This authorization ("Permit") is entered into between The City of Milpitas, a municipal corporation ("the City") and Shapell Industries of Northern California, 100 North Milpitas Blvd, Milpitas, CA 95035 ("Permittee").

RECITALS

- A. Permittee has requested permission from the City to enter upon, utilize, construct, operate and maintain improvements within and adjacent to certain right of way, described as follows ("Encroachment Area"): for landscaping of these street frontage areas
 1. Both sides of Milpitas Boulevard between Calaveras Boulevard and the commercial property north of Town Center on the west side and between Calaveras Boulevard and Town Center Drive on the east side.
 2. Both sides of Hillview Drive from Berryessa Creek to Calaveras Boulevard.
 3. North side of Calaveras Boulevard from Milpitas Boulevard to Hillview Drive (except City Hall).The areas are also shown on exhibit "A".
- B. Permittee's utilization of the Encroachment Area will be undertaken for the benefit of the Permittee shown on parcel map filed on 20 (date) 7, 1987 in book 576 of maps at pages 34, 5, 6, 7 in the Office of Santa Clara Recorder's Office.
- C. Permittee desires to enter upon the Encroachment Area in order to construct, operate and maintain those improvements ("the Improvements") described as follows: landscaped street frontage consisting of sidewalk, fences, landscape & irrigation and appurtenant facilities such as spheres and uplighting.
- D. The purpose of this Permit is to document the City's authorization of such Encroachment and describe the terms and conditions governing such Encroachment.
- E. The execution of the encroachment permit agreement is a requirement of condition #5 of City Council approval for Town Center Commercial on May 4, 2004.

The parties therefore agree as follows:

1. City's Title By acceptance of the benefits hereunder, Permittee acknowledges the City's or Caltrans' title to and interest in the real property of which the Encroachment Area is a part and waives any right to contest the validity of such title or interest.
2. Existing Utilities Installation of the improvements shall not interfere with existing utilities within the Encroachment Area. If such interference is unavoidable, Permittee will be solely responsible for obtaining permission from the providers of such utilities, coordinating its construction activities with such utility providers and satisfaction of any expenses resulting from such interference.

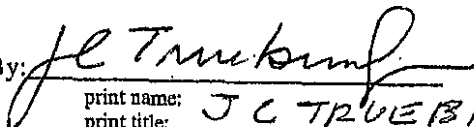
3. Maintenance, Removal or Relocation of Improvements Permittee acknowledges that the Encroachment Area is or may be the site of future public improvements in that all rights of use as described herein may be terminated upon 90 days prior notice of termination by the City. Upon such termination, Permittee shall, within the time prescribed by the City, remove or relocate all improvements placed, constructed or maintained within the Encroachment Area by Permittee. If Permittee fails to comply with such termination notice within the time prescribed, the City may remove and destroy the improvements without reimbursement to Permittee, its successors and assigns, and the cost of such removal shall be paid by Permittee, its successors and assigns, to the City and shall constitute a debt owing to the city. So long as the permit remains in effect, Permittee shall be solely responsible for maintenance of the improvements.
4. Construction Standards Construction of the improvements will conform in all respects to the standards and requirements of the City and will be subject to the City's normal inspection and approval procedures.
5. Indemnity/Hold Harmless Permittee hereby agrees to defend, indemnify and hold harmless the City, its elected and appointed boards, officers, agents and employees, from any liability, claims or damages for personal injury or death as well as for property damage which may arise as a result of this Permit, whether due to acts or omissions of Permittee or any subcontractor, agent, employee or other persons or entities directly or indirectly employed by or acting as agent or under the direction of Permittee. In the event of any such liability, claims or damages, Permittee will defend the City, its agents and employees, with counsel reasonably acceptable to the City. The parties acknowledge that this indemnity provision is a material inducement for the City to grant this authorization and that the City would not grant this authorization without these indemnity provisions.
6. Termination/Revocation As set in paragraph 3 above, the City may terminate this Permit. Determination by the City Council of the City that Permittee, its successors or assigns, is in default hereunder may be cause for revocation of this permit. So long as the permit remains in effect, Permittee shall be solely responsible for maintenance of the improvements and shall maintain the improvements in accordance with the standards and requirements of the City. If Permittee fails to maintain the improvements consistent with the standards and requirements of the City, the City may, but shall not be required to, maintain the improvements at the cost of the Permittee. If the City does maintain the improvements, the City may bill Permittee for its costs, and the Permittee agrees to pay such costs.
7. Attorney's Fees In the event of legal action between the parties with respect to this authorization, the party prevailing in such action will be entitled, in addition to such other relief as may be granted, to a reasonable sum as its attorney's fees and costs.
8. Compliance with other Conditions Permittee acknowledges that the authorization contained herein is in addition to and not in lieu of any other permits, inspections or approvals which Permittee may need to obtain from the City, from other utility providers or property owners with respect to its construction of the improvements and that Permittee must comply with all additional conditions imposed by the City with respect to construction of the improvements.
9. Encroachment Authorization Based upon the foregoing terms and provisions, the City hereby authorizes encroachment by Permittee upon the Encroachment Area.
10. Successors and Assigns This authorization will bind and inure to the benefit of the parties, the respective heirs, successors and assigns. This authorization is intended to run with the benefited property as a covenant running with the land and the obligations of Permittee described herein will constitute continuing obligations of all persons or entities succeeding to Permittee's ownership interest in such benefited property.
11. Acknowledgement: Permittee desires the close proximity of the building to the existing utilities and recognizes the inherent risk to the building for any necessary utility repair work. Permittee waives any claim against City for damages to the Building or disruption to business resulting either directly or indirectly from any work performed by the City or its contractors with respect to the installation,

maintenance, inspection, repair, or removal of existing utilities. No structure or wall shall be constructed within the City's easement, except for planter boxes or conventional fencing (chain link, steel or wood). City access to the easement areas shall be maintained at all times.


Executed on this 8th day of Sept., 2005 at Milpitas, California.

PERMITEE:

Shapell Industries of Northern California

By: 
print name: J C TRUEBRIDGE
print title: PRESIDENT

Shapell Industries of Northern California

By: 
print name: ROBERT D MOORE
print title: EXEC. VP

CITY OF MILPITAS, A MUNICIPAL CORPORATION:

By: _____
Charlie Lawson
City Manager

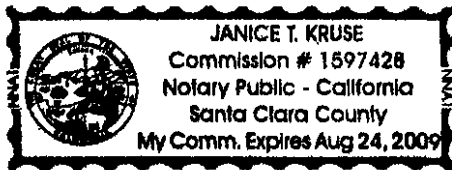
By: _____
City Attorney as to form

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

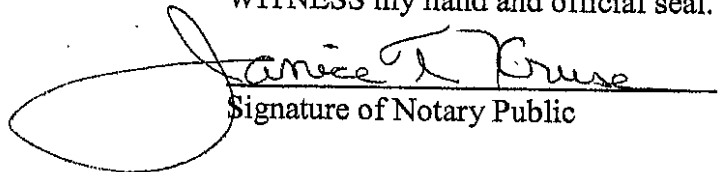
State of California

County of Santa Clara

On September 8, 2005, before me, Janice T. Kruse, Notary Public personally appeared, J.C. Truebridge & Robert D. Moore personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.



WITNESS my hand and official seal.


Signature of Notary Public

Optional Information

Title or Type of Document: Encroachment Permit Agreement Upon Public Right of Way

Capacity Claimed by Signer: President and Executive Vice President of Shapell Industries of Northern California.

Exhibit "A"

The improvements consist of plantings, irrigations, fence, spheres, uplighting and concrete sidewalk as shown below and further detailed on City of Milpitas, building permit plans B-SI2005-2 and B-SI2005-6 and public plans.